

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2008-031021-001 DT

12/19/2012

HON. SHERRY K. STEPHENS

CLERK OF THE COURT  
C. McCain  
Deputy

STATE OF ARIZONA

JUAN M MARTINEZ

v.

JODI ANN ARIAS (001)

KIRK NURMI  
JENNIFER L WILLMOTT

RULING

The Court has considered the Defendant's Motion to Preclude State from Admitting or Publishing Ms. Arias' Prior Interviews filed December 9, 2012 and the Objection to Defendant's Motion to Preclude State from Admitting or Publishing Ms. Arias' Prior Interviews filed on December 12, 2012. No reply was filed. The parties submitted the issue on the pleadings with no oral argument. In the motion, Defendant seeks preclusion of her prior interviews with police personnel and the media. Defendant argues admission of these statements would violate her rights under the 5th, 6th and 14th Amendments to the United States Constitution and Article 2 § 4 of the Arizona Constitution as well as Rules 613, 401, 402 and 403 of the *Arizona Rules of Evidence*. Defendant does not provide any specific statements to which she is objecting.

The Court finds the substance of the prior statements referenced in the defendant's motion are relevant and are the statements of an opposing party under Rule 802(d)(2), *Arizona Rules of Evidence*. The Court further finds such statements would be admissible under Rule 613(b), *Arizona Rules of Evidence*. Without a specific statement, the Court cannot evaluate admissibility under Rule 403, *Arizona Rules of Evidence*. If the defendant has an objection to a specific statement, that objection must be made at trial and the Court will rule accordingly.

**IT IS ORDERED** denying the Defendant's Motion to Preclude State from Admitting or Publishing Ms. Arias' Prior Interviews filed December 9, 2012.

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The Court has considered the Defendant's Motion to Preclude State from Presenting Evidence Related to the Theft of a Gun that Occurred in Yreka on May 28, 2008 filed on December 5, 2012, the Objection to Defendant's Motion to Preclude State from Presenting Evidence Related to the Theft of a Gun that Occurred in Yreka on May 28, 2008 filed on December 11, 2012, the Reply to State's Response to Defense Motion to Preclude Evidence of Gun Theft filed December 13, 2012, with attachment, and the oral argument of counsel on December 19, 2012. In the motion, Defendant seeks preclusion of any evidence related to the theft of a gun that occurred at her grandparents' home on May 28, 2008. Defendant argues such evidence is hearsay and thus inadmissible.

On May 28, 2008, the defendant's grandparents reported the theft of a .25 caliber automatic pistol to the Yreka, California police department. The police report for that incident states that the defendant was present and spoke with an officer about her presence at her grandparents home earlier that day. On July 15, 2008, the defendant was interviewed by Detective Flores. During that interview, Detective Flores asked the defendant about reporting a .25 automatic gun stolen. The detective noted that a .25 caliber gun was the same caliber of weapon used to kill Travis Alexander. Eventually, the defendant told Detective Flores she did not know there was a gun at her grandparent's home until her grandparents reported it stolen the day the burglary was reported to police. She also told Detective Flores that she did not know what a .25 caliber gun looked like. She said her grandfather said the stolen gun looked like a toy gun.

Defendant seeks preclusion of this testimony on the ground the statements about the gun were based on the detective's words and not the statements of the defendant. Thus, these statements should be precluded.

Rule 801(a), *Arizona Rules of Evidence*, defines "statement" to mean a person's oral assertion, written assertion or nonverbal conduct, if the person intended it as an assertion. Rule 801(d)(2), *Arizona Rules of Evidence*, provides that the statement of an opposing party is not hearsay.

Based upon a review of the entire transcript of the July 15, 2008 interview and the pertinent portion of the Yreka California police report, the Court finds the defendant's statements to the Yreka police officer and to Detective Flores regarding the .25 caliber gun are statements of a party opponent under Rule 801, *Arizona Rules of Evidence*. The Court further finds the defendant's responses to Detective Flores during his interview were "statements" as defined in Rule 801(a), *Arizona Rules of Evidence*. The detective's questions gave context to the defendant's responses and those responses constituted assertions by the defendant. The Court further finds the defendant's statements are relevant and the probative value of these statements is not substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading

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the jury, undue delay, wasting time or needless presentation of cumulative evidence. See Rules 401, 402 and 403, *Arizona Rules of Evidence*.

**IT IS ORDERED** denying the Defendant's Motion to Preclude State from Presenting Evidence Related to the Theft of a Gun that Occurred in Yreka on May 28, 2008 filed on December 5, 2012.

This case is eFiling eligible: <http://www.clerkofCourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.